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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,090	02/16/2007	Andy Ho	22409-00393-US	9471
30678 7590 01/29/2010 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER				
TRINH, MINH N				
ART UNIT		PAPER NUMBER		
3729				
MAIL DATE		DELIVERY MODE		
01/29/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,090

Applicant(s)

HO ET AL.

Examiner

Minh Trinh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5-8, 10-12, 14-17 and 68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-8, 10-12, 14-17 and 68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed on 11/13/09 has been considered but is ineffective to overcome the prior art reference.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 6-8, 17 and 68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. (see prior Action, para. 2).
4. Claims 3, 6-7, 16-17 and 68 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (see prior Action, para. 3).
5. The drawings are objected to under 37 CFR 1.83(a). For reasons set forth in prior Action, para. 4.

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6. Claims 1, 5 and 10-12 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Miura (GB2166005). This rejection is set forth in prior Action, paragraph 5.
7. Claims 14-15 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Miura. This rejection is set forth in prior Action, paragraph 6.
8. Regarding claims 3, 16-17, it is noted that no art rejections have been applied to claims 3, 16-17, since there are a great deal of confusion and uncertainty as to the proper interpretation of the limitations of the above claims. Therefore, it would not be proper to reject such claims on the basis of prior art. See MPEP 2173.06.

Response to Arguments

9. Applicant's arguments filed on 11/13/09 have been fully considered but they are not persuasive. Because the amendment to the claims has not overcome rejection 112 set forth in the previous Action.

The Drawings:

The Drawing is also objected for reason set forth in prior action.

The 112 rejection:

under the "Remarks" applicants contend that the 112 first is invalid. the Examiner disagrees because the features as point out by the applicants do not

seem to be in the disclosure of the invention it appears that the features recited in the PGpub rather than in the disclosure of the instant invention because paragraphs indicated by applicants in page 5 i.e., 0016 -0017; 0067-0068; respectively. Not found in the specification.

The prior Art:

Applicants contend under the "Remarks" paragraph 21 -22 that Miura does not teach "any type of antenna element configured to be implanted in a recipient". The examiner position that the Miura discloses the method of making an antenna and the antenna can be used in many ways which including for medical purpose. Note: the "configured to be implanted in a recipient" is in the preamble which is functional intended use which do not further limit the claimed method or the forming of the antenna. Further, regarding the "lacking of feed through member and the connecting of the wire to the feed through" (see under "Remarks" para. 23+). The Examiner again directs applicant to Fig. 4 where 8 and 9 represented the claimed feed through members because each end of wire does feed on 8 and 9, For above reasons the prior art rejection remains stand for same reasons of record. Note that claim interpretation in light of the specification and the limitations from the specification should not be read into the claim.

Applicant's arguments fail to point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

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Applicants note that an interview after a final rejection will not be granted unless the intended purpose and content of the interview is presented briefly, in writing (the agenda of the interview must be in writing). Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations which would require more than nominal reconsideration or new search will be denied. See MPEP 714.13 and 713.09.

Conclusion

10. It is noted that any amendment made to the disclosure and the claims. Applicant requires to point out the support provide numeral references to the claimed limitations as well as support in the disclosure (i.e., page and line numbers and reference number associated with from the drawings) for better clarity (See 37CFR 1.111 and section 2163.06 of the MPEP).

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Trinh whose telephone number is (571) 272-4569. The examiner can normally be reached on Monday -Thursday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mt
1/27/10

/Minh Trinh/
Primary Examiner, Art Unit 3729